

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
★ JUN 28 2016 ★

David
6/28/16
(S)

BROOKLYN OFFICE

----- x
DARRYL ROBERSON,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
----- x

MEMORANDUM &
ORDER

14-cv-6175 (ENV)

VITALIANO, D.J.,

Plaintiff Darryl Roberson appeals the denial of his application for Supplemental Security Income in a decision dated March 29, 2013, where he was found not disabled. *See* Compl., Ex. 1, ECF Dkt. No. 1. Plaintiff sought Appeals Council review, but on August 11, 2014, the Appeals Council denied review, making the March 29, 2013 determination the final decision of the Acting Commissioner of Social Security (the "Commissioner"). *Id.*, Ex. 1, at 1. The Appeals Council denial notice was sent to Roberson on August 11, 2014, and he acknowledges that he received the notice by mail on August 16, 2014. *Id.* at 1.

The Commissioner has moved to dismiss this action as untimely. ECF Dkt. No. 11. The Social Security Act only permits a civil action appealing the final decision of the Commissioner when it is "commenced within sixty days after the mailing" of the Appeals Council decision "or within such further time as the Commissioner of Social Security may allow." 42 U.S.C. § 405(g). *See Wong v. Bowen*, 854 F.2d 630 (2d Cir. 1988) (strictly construing 60-day limitation); *Davila v. Barnhart*, 225 F. Supp. 2d 337, 338 (S.D.N.Y. 2002) (quoting *State of New York v. Sullivan*, 906 F.2d 910, 917 (2d Cir. 1990)) (noting equitable tolling is "not infrequently appropriate" but that plaintiff bears the burden of establishing such extraordinary circumstances).

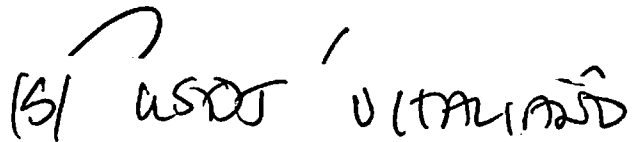
This action was filed on October 22, 2014, 68 days after Roberson says he received the

notice. Plaintiff has failed to explain his delay in filing, or otherwise oppose the motion. *See* Orders dated 4/1/15 and 11/5/15 (granting extensions of time to file opposition); *see also* ECF Dkt. No. 12 (letter from the Commissioner, ccing Roberson, enclosing among motion documents the requisite notice to *pro se* litigants that plaintiff's claims may be dismissed if he fails to respond).

The complaint is therefore dismissed with prejudice as time-barred on its face. The Clerk of Court is directed to enter judgment accordingly and close this case.

So Ordered.

Dated: Brooklyn, New York
June 22, 2016

A handwritten signature in black ink, appearing to read "ERIC N. VITALIANO", written over a horizontal line.

ERIC N. VITALIANO
United States District Judge